IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

Bail Appl..No. 4645 of 2007()

O.R.NO.7/07 OF NARCOTIC CONTROL BUREAU, REGIONAL INTELLIGENCE UNIT, TRIVANDRUM
S.C.247/07 OF ADDL. SESSIONS JUDGE (ADHOC)-I, KASARGODE

PETITIONER : ACCUSED NO.3 IN OR.NO.7/2005

ARIF BENDICHAL @ ARIF, AGED 41,
S/O.LATE IBRAHIM HAJEE ABDULLA,
HOUSE NO.IV/153, ANEES MANZIL,
BENDICHAL, THEKKIL P.O. KASARAGODE.

BY ADV. SRI.B.RAMAN PILLAI
SRI.R.ANIL
SRI.RAJU RADHAKRISHNAN

RESPONDENTS: COMPLAINANT

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1. INTELLIGENCE OFFICER,
N.C.B. REGIONAL INTELLIGENCE UNIT,
THIRUVANANTHAPURAM.
(REPRESENTED BY THE STANDING COUNSEL OF N.C.B).

2. THE STATE OF KERALA, REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

BY STANDING COUNSEL FOR NCB SRI.C.P.UDAYABHANU

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4645 of 2007

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Dated this the 2nd day of August, 2007

O R D E R

Application for anticipatory bail. The petitioner is the third accused. He, along with the co-accused, was arrayed as an accused in a prosecution under the N.D.P.S. Act. The alleged offences relate to 710 grams of heroin, commercial quantity, found in the possession of the accused. The petitioner was not available at the stage of investigation. Investigation was complete. Final report was filed showing the petitioner as the third accused. The petitioner did not appear before the court also. The trial against available accused proceeded. First accused was convicted whereas the second accused was acquitted. The case against the petitioner has been split up. Consequent to the non-appearance of the petitioner, warrant of arrest has been issued against the petitioner. The petitioner, in these circumstances, has come before this Court with this application claiming anticipatory bail.

2. The learned counsel for the petitioner submits that the absence of the petitioner earlier was not wilful. He is absolutely

innocent. He is willing to co-operate with the court for the expeditious disposal of the case. He does not deserve to endure the trauma of arrest and detention now. Subject to appropriate conditions, the petitioner may be granted anticipatory bail, prays the learned counsel.

3. The learned Standing counsel for the Narcotic Control Bureau opposes the application. The learned counsel submits that the petitioner does not deserve the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. or the extra ordinary inherent jurisdiction under Section 482 Cr.P.C. The petitioner was not available for interrogation in the course of investigation. The quantity is huge - commercial quantity. Even regular bail cannot be granted to the petitioner unless the court is in a position to entertain the twin satisfaction contemplated under Section 37 of the N.D.P.S. Act. In these circumstances anticipatory bail may not be granted to the petitioner, submits the counsel for N.C.B.

4. I find merit in the opposition. Having considered all the relevant inputs, I am of the opinion that this is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Sessions Judge and then seek regular bail in the ordinary course. I find no reason to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioner.

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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